IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24/07/2003

CORAM

THE HONOURABLE MR.JUSTICE A.KULASEKARAN

W.P.No.16044 of 2003 AND W.P.No. 18725 OF 2003
AND
W.P.M.P.Nos.20094,20095,23424 AND 23425 OF 2003

W.P.No.16044 OF 2003

PSG College of Technology,
Peelamedu,
Coimbatore-641 004,
represented by its Principal,
Dr.S.Vijayarangan ... Petitioner

-Vs-

1.The Secretary,
Tamil Nadu Engineering Admissions,
Anna University,
Guindy, Chennai-600 025.

2.The State of Tamil Nadu,
rep.by its Secretary to Government,
Higher Education Department,
Fort St.George,
Chennai -600 009. ... Respondents

W.P.No.18725 OF 2003

PSG & Sons' Charities,
Peelamedu,
Coimbatore-641 004,
represented by its Managing Trustee
Sri V.Rajan ... Petitioner

-vs-

The State of Tamil Nadu,
rep.by its Secretary to Govt.,
Higher Education Department,
Fort St.George,
Chennai-600 009. ... Respondent

For petitioners : Mr.R.Krishnamurthy,
Sr.Counsel for Mr.D.Balaraman

^For respondent No.2 in W.P.16044/2003
and respondent in W.P.18725/2003 : Mr.S.P.Prabakaran,
Addl.Govt.Pleader.

For respondent 1 in W.P.No.16044/2003 : Mr. G.Masilamani
Sr.Counsel.

Petitions under Article 226 of The Constitution of India,
praying for issuance of a writ of certiorarified mandamus, as stated therein.

:COMMON ORDER

Writ Petition No.16044 of 2003 has been filed for issuance of a writ of certiorarified mandamus, to call for the records pertaining to the impugned order of the first respondent in its letter No.666/EA3/200 3, dated 17.04.2003, quash the same and consequently, permit the petitioner to fill up 50% of seats in the self-financing courses of the petitioner institution for the current academic year 2003-2004.

2. Writ Petition No.18725 of 2003 has been filed for issuance of a writ of certiorarified mandamus, to call for the records pertaining to the impugned order of the respondent in G.O.Ms.No.240, Higher Education Department, dated 30.06.2003, quash the same and consequently, permit the petitioner to fill up 50% of the seats in the self- financing courses of the petitioner institution for the current academic year 2003-2004.
3. The Government of Tamil Nadu, represented by its Secretary to Government, Higher Education Department, is the sole respondent in W.P.No.18725 of 2003 and the second respondent in W.P.No.16044 of 2003, the first respondent being The Secretary, Tamil Nadu Engineering Admissions, Anna University.

4. The Anna University, hereinafter referred to as 'the University', sent a letter dated 17.04.2003 to the petitioner, stating that, as per the directions of the Government, 90% of the total intake (branch wise) will be filled through Single Window System and the remaining 10% seats will be allotted through Management Quota in the Government Aided Institutions for admission to all Self-Supporting UG Programmes for the year 2003-2004, which is challenged in W.P.No.16044 of 20 03. After filing the said Writ Petition, the State of Tamil Nadu, represented by its Secretary to Government, Higher Education Department, hereinafter referred to as 'the State Government', issued G.O.Ms. No.240, Higher Education Department, dated 30.06.2003, stating that, for the year 2003-2004, 20% of the seats in Self-supporting programmes in the Government Aided Engineering Colleges be filled up by the Management and the remaining 80% of the seats be filled up by the Government through Single Window System, which is challenged in W.P.No.1872 5 of 2003.
5. The facts involved in the two Writ Petitions are that, the petitioner is a Public Charitable Trust and has established PSG College of

Technology in the year 1951, which is categorised as an Aided Engineering College under Category No.1 in the classification of the State Government. Though the petitioner institution is being termed as an Aided Engineering College, the State Government discontinued all its recurring and non-recurring grants for t he establishment of buildings, equipment and other infrastructures. The last building grant received by the College was in the year 1967 and other major non-salary grants were discontinued with effect from the year 1977. The only grant now being continued for the petitioner institution is the grant for salaries to be paid to certain fixed number of posts in the teaching and non-teaching category of employees. The Government has permitted the college to commence new courses of stu dy from the year 1983-1984, only on self-financing basis. In Under-graduate and Post-graduate Non-engineering Professional Courses, the college has established 20 self-financing courses along with 21 aided courses. A total number of 598 students are admitted in the Non-engineering Post-graduate and Under-graduate courses. The college has employed about 491 teaching and non-teaching staff, among which, 245 staff are covered under Management Salary Category. It is stated that in matters relating to admissions and recruitment of employees, the rules and regulations applicable to Self-financing colleges as are prevailed in the judgment of the Supreme Court in Unnikrishnan versus State of Andhra Pradesh (1993 (1) SCC 645) did not make any distinction between the selffinancing courses in self-financing colleges and self-financing courses in aided colleges. The process of admission was done through Single Window System, which has been entrusted to the Anna University. After TMA Pai Foundation case reported in 2002 (8) SCC 481, more autonomy has been given to self-financing colleges in the matters of admission of students, internal management etc. The State Government issued G.O. Ms.No.19, Higher Education Department, dated 13.02.2003, prescribing percentage for admission to the Management Quota and the Government Quota. Even in the said G.O., the Government Quota does not anywhere make a prescription that self-financing courses in aided institutions must be treated as aided courses. In the said G.O., the Government decided to fill up 50% of the seats by the Government through Single Window System in admissions and the remaining 50% of the seats were permitted to be filled up by the Management. The petitioner management has decided to accept 50% as the Management Quota only as a transitory arrangement for the academic year 2003-2004. However, it reserves right to challenge the reasoning in the stipulation of 50% quota to the management in the self-financing courses.

6. After receipt of the letter dated 17.04.2003 from Anna University, the petitioner made a representation on 28.04.2003 to furnish the details of the order, said to have been passed by the State Government, but, nothing was furnished. Later, the Government sent a communication dated 02.05.2003, requesting the petitioner to attend a meeting to discuss the apportionment of seats and the petitioner's representative attended the same on 08.05.2003. According to the petitioner, the invitation made by the State Government to attend the meeting shows that there was no specific order passed, as alleged in the letter dated 17.04.2003, sent by the University. The Government has convened a meeting on 12.06.2003 and the petitioner management was directed to attend the said meeting. In the meeting, the Government suggested that the Management shall admit only 20% of the seats and the Government shall admit 80% in self-financing courses. The representative

of the petitioner college did not accept the suggestion and insisted on the claim to fill up 50% of the seats in self-financing courses. It is further submitted that the Governmen t, without considering the facts placed before them, unilaterally decided and passed the G.O.Ms.No.240 dated 13.06.2003, which is now challenged.

7. Learned Senior Counsel Mr.R.Krishnamurthy, appearing for the petitioners, submits that the impugned communication of the University as well as the order of the State Government are contrary to law, unreasonable and against the principles laid down by the Supreme Court and also this Court. The petitioner has insisted on the Government to permit them to fill up 50% of the seats for the year 2003-2004 as per G.O.Ms.No.19 dated 13.02.2003, by explaining the expenses incurred and also the various problems in establishing and administering the self-financing courses. The petitioner management never accepted the proposals of apportionment of seats in the ratio of 20:80. Once the Government has accepted the apportionment of seats between the self-financing institutions and the Government as 50:50, insisting on 20:8 0 in the petitioner's case is violative of Article 14 of the Constitution of India. The Supreme Court, in TMA Pai Foundation case, held that the self-financing colleges should not be treated on par with aided professional institutions. The orders impugned are contrary to the principle laid down by the Supreme Court and also Articles 14 and 2 1 of the Constitution. The self-financing courses were started in various fields by investing huge amounts and it is unfair to apply the same procedure of admission to both aided and unaided professional colleges.

8. Learned Senior Counsel Mr.R.Krishnamurthy further submits that though the University has mentioned in its impugned communication that, as per the orders of the Government 90% of the total intake will be filled up through Single Window System and the remaining 10% through Management quota, the University failed to produce such an order of the Government, despite request. He also submits that the provisions of G.O.Ms.No.19 dated 13.02.2003 ought to have been applied in the petitioner's case as well and accordingly prayed for the relief stated supra.

9. Conversely, learned Senior Counsel Mr.G.Masilamani, appearing for the respondent University, submits that, pursuant to the oral orders of the Government, a communication dated 17.04.2003 has been sent to the petitioner, informing 90% of the total intake (branch wise) will be filled through Single Window System and the remaining 10% seats will be allotted through Management Quota in the Government aided institutions for admission to all Self-supporting UG Programmes for the year 2003-2004 and that, later, the State Government has issued a G. O.Ms.No.240 dated 30.06.2003, fixing the percentage of 80-20 and hence, the earlier communication becomes infructuous.

10. Mr.G.Masilamani further submits that the judgment in TMA Pai case, particularly, paragraph 68 is placed before the Supreme Court, seeking for clarification, and prayed this Court to adjourn this case, till the clarification is resolved by the Supreme Court.

11. Mr. Rajasekaran, learned Additional Government Pleader

appearing for the 1st respondent relied on the records and submitted that the petitioner institution is a Government unaided Engineering College, hence the ratio 80:20 fixed is perfectly valid. G.O.Ms.No.19 dated 1 3-02-2003 do not explicitly mention anything about apportionment of the seats by the Management and Government in respect of the selfsupporting courses run by aided Engineering college like the petitioner. The self-supporting courses run by aided Colleges not stand equal to the courses run by the unaided colleges. A representation made by the petitioner that they should be treated equally with selffinancing college was rightly rejected by the first respondent. With a view to arrive at a mutual acceptable formula in the matter before counselling under single window system for the year 2003-2004, a meeting was convened with the Management and three Government Engineering Colleges including the petitioner herein. In the said meeting, it was agreed that 20% : 80% for the academic year and accordingly 80% seat can be filled by the Government through single window system. It is also decided to appoint a committee to be constituted under the Chairmanship of Vice- chancellor of Anna University for apportionment of seats between the Government and the Management of aided colleges for the forthcoming academic year. Having participated in the meeting and agreed for 80;20 ratio, it is not open to the petitioner to challenge the same now and prayed for dismissal of the writ petition.

12. This Court, on 03.06.2003, granted an interim direction to the effect that the State Government can fill up 50% of the seats in the petitioner institution with reference to the seats coming under the Self-supporting Under-graduate Programme for the year 2003 and the remaining 50% seats shall be kept vacant, awaiting further orders.

13. The University sent a communication dated 17.04.2003, informing the apportionment of seats by the Government and the management as 90 :10, as directed by the State Government. Though the said intimation was said to have been made as per the directions of the Government, no documentary evidence was placed, despite the request made by the petitioner. On 25.04.2003, the petitioner sent a representation to the Government, requesting it to follow the Supreme Court judgment in TMA Pai Foundation v. State of Karnataka for admission to the selffinancing courses, as applicable to other Self-financing institutions in the State. The petitioner also sent another representation dated 28 .04.2003 to the University, pointing out the provisions of G.O.Ms.No.19/2003 dated 13.02.2003, protesting against the ratio of 90:10. Thereafter, the Government sent a letter dated 02.05.2003, calling upon the petitioner to attend the meeting to be held on 08.05.2003 in respect of apportionment of seats. The petitioner submitted financial particulars about the Government of Tamil Nadu, grants and the petitioner's share (year-wise) from the year 1982 to 2003; the programmes offered, relating to grant-in-aid courses and self-financing courses and also the details of teaching and non-teaching staff. But, neither the Government nor the University placed any document to dispute the above said facts and figures, furnished by the petitioner.

14. The Government has passed G.O.Ms.No.240 dated 30.06.2003, stating that a meeting was held on 12.06.2003, wherein three colleges, including the petitioner, participated and unanimously agreed for apportionment of seats in

self-supporting courses in the formula of 80% of seats to be filled up by the Government and the remaining 20% by the management for the academic year 2003-2004 and as far as the next academic year, namely, 2004-2005 is concerned, the same may be decided based on the recommendation of the Committee to be constituted under the Chairmanship of the Vice-Chancellor, Anna University.

15. This Court directed the respondents herein to produce the records, relating to the consent given by the petitioner management, agreeing for 80:20 ratio, and after several short adjournments, the Government has produced the files. On a perusal of the same, this Court could not find any such consent given by the petitioner. Much prior to the order impugned, the petitioner had sent a letter, withdrawing earlier proposal and requested for 50-50 ratio. Be that as it may, the order impugned has been passed by the Government very strangely as if the petitioner has agreed for 80:20 ratio.

16. The Government of Tamil Nadu issued G.O.Ms.No.19 dated 13-02-200 3 consequent to the judgment of eleven Judges Constitution Bench of the Honourable Supreme Court T.M.A. Pai Foundation and others Vs. State of Karnataka and others. In the said judgment, the Honourable Supreme Court, while dealing with private unaided non-minority educational institutions have held that it is unfair to apply the same Rules and Regulations regulating admissions to both aided and unaided professional colleges and unaided professional colleges are entitled to autonomy in their administration, while, at the same time, they do not forego or discard the principles of merits. It must, therefore, be permissible for the University and the Government, at the time of granting recognition, to require a private unaided institution to provide for merit based selection, while, at the same time giving the management sufficient discretion for admitting students namely permitting the management to fill up certain percentage of the seats, prescription of percentage for this purposes has to be done by the Government according to the local needs and different percentage can be fixed for minority unaided and non-minority unaided professional colleges. Based on the judgment, the Government has convened a meeting with the Management of unaided professional college. Both minority and nonminority attended the meeting. After examining the views expressed by the management, the Government passed the said G.O.Ms.No.19 datee 13-02-2 003 allowing 50% of seats including NRI Quota to be filled up by unaided non-minority professional institutions by following transparency and reasonable method of admission and remaining 50% seats be filled up by the Government through single window system of admission by following rules of reservation of State Government. Liberty is also given to unaided non-minority institutions who desire to part with more percentage of seats over and above 50% of the Government be filled up through single window system of admission.

17. The petitioner herein has furnished details of programmes offered under grant-in-aid courses in seven disciplines in undergraduation in which sanctioned intake is 270. Sanctioned intake in Selffinancing courses aided discipline in undergraduation is 480. Strength of teaching staff in

grant-in-aid is 112 and non-teaching staff is 108. Self-financing courses teaching staff is 115 and non-teaching staff is 113. Year-wise financial particulars about the Government of Tamil Nadu grant and management share also furnished by the petitioner. The Government of Tamil Nadu recurring grant from 1982-1983 to 2002-20 03 was Rs.37,89,26,135/- which was spent towards salary, building, equipment, furniture, library etc., and the petitioner share was Rs.5,6 1,69,328/-. The Petitioner's expenses in self-financial courses during the period 1983-1984 to 2001-2002 was Rs.25,65,42,126/- which was spent towards salary, building, equipment, furniture, library and other assets. Relying on the said facts and figures, it is submitted that the self-supporting courses to be equated with self-financing colleges and ratio 50:50 has to be followed.

18. It is not disputed that the petitioner institution commenced Self-financing courses both Under-graduate and Post-graduate from the year 1983 onwards and the Self-financing courses are not receiving any grants either from the Central Government or the State Government. The infrastructural facilities, equipment and the cost of employing teaching and non-teaching staff for those courses are being managed and incurred by the management. It is also an admitted fact that ever since the commencement of self-financing courses, the State Government recognized these courses as fully self-financing and applied all the rules applicable for admission of students to these courses and allotting free, payment and management quota, as

applicable to selffinancing institutions till last year, despite the fact that the institution is basically an aided institution. The investment made and recurring expenses being met by the petitioner institution is not disputed.

19. The Honourable Supreme Court in T.M.A. Pai case held that it would be unfair to apply the same rules and regulations for admission in both aided and unaided professional colleges and unaided professional colleges are entitled to autonomy. Certain percentage of seats can be reserved for admission by the management out of those students who have passed the common entrance test held by itself or by the State/University while the rest of the seats on the basis of counselling by State agency, it will take care of poorer and backward sections of the society. The prescription of percentage has to be done by the Government according to the local needs. Applying the said judgment, no doubt, G.O.Ms.No.19 dated 13-02-2003 has been issued and apportionment of 50:50 between government and unaided non-minority professional institutions has been done.

20. While passing the impugned order G.O.Ms.No.240 dated 30-06-2003, the Government has not applied the ratio laid down by the Supreme Court in T.M.A. Pai case. It is evident that while prescribing 80:20 ratio, it failed to assign any valid reason as to why the selffinancing courses are not to be treated equal by the courses run by selffinancing colleges. Similarly not whispered anything about the consideration of 'local needs' pointed out by Supreme Court. The only alleged reason assigned is that the petitioner has given consent for 80:20, but the records produced more at counter. Admittedly, since commencement of self-financing courses in the petitioner institution were treated on par with the courses of self-financing

institutions. When the restrictions are imposed by the order impugned, in the absence of valid reasons, interference of this Court is warranted. Hence, the impugned orders are set aside.

21. Considering the facts mentioned above, following the judgment of the Honourable Supreme Court reported in T.M.A. Pai case mentioned above and also G.O.MS.No.19 dated 13-02-2003 issued by the Government allowing unaided non-minority institutions to admit 50% of the seats by themselves, to meet the ends of justice, I direct the 1st respondent herein to permit the petitioner to fill up 50% of the seat in respect of self-financing course in their aided institutions for the academic year 2003-2004. It is also made clear that it is open tot he 1 st respondent to appoint a committee as indicated in the impugned order and consider several aspects in terms of the judgment of the Honourable Supreme Court in T.M.A. Pai case and pass necessary orders in advance prior to the commencement of the next academic year.

In the result, the writ petitions are allowed. No costs. Connected WPMPs are closed.

Index :Yes
Internet : Yes

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To :
1.The Secretary,
Tamil Nadu Engineering Admissions,
Anna University,
Guindy, Chennai-600 025.

2.The Secretary to Government,
State of Tamil Nadu,
Higher Education Department,
Fort St.George,
Chennai -600 009

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